

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Criminal No. 19-240 (PJS/ECW)

UNITED STATES OF AMERICA,)
)
)
Plaintiff,)
) GOVERNMENT'S POSITION ON
v.) SENTENCING
)
ANDREW JOSEPH FORCIER,)
)
Defendant.)

COMES NOW the United States of America, by and through its undersigned attorneys, Erica H. MacDonald, United States Attorney for the District of Minnesota, and Thomas M. Hollenhorst, Assistant United States Attorney, and submits the following position on sentencing concerning the defendant, Andrew Joseph Forcier. The government asks the Court to sentence the defendant to a term of imprisonment at the low end of the guideline range of 151 to 181 months.

Procedural History

On September 17, 2019, the defendant was charged in the Indictment with conspiracy to distribute 500 grams or more of a mixture and substance containing a detectable amount of methamphetamine (Count 1) in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A) and 846; and possession with the intent to distribute of 500 grams or more of a mixture and substance containing a detectable amount of methamphetamine (Count 2) in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(A). ECF 1. On December 12, 2019, the defendant pleaded guilty to Count 1 of the Indictment pursuant to the terms of a written plea agreement. ECF 22, 24.

The Nature and Circumstances of the Offense

From the fall of 2018 through February 21, 2019, the defendant conspired with Jesus Guerrero-Aguilar (“Guerrero”) to distribute 500 grams or more of a mixture and substance containing a detectable amount of methamphetamine. ECF 24 ¶ 2; ECF 30 ¶ 11. During the period of the conspiracy, the defendant obtained pound quantities of methamphetamine from Guerrero, some of which he then distributed to drug customers. *Id.* On February 21, 2019, the police saw Guerrero meet with the defendant at a gas station in Bonifacius, Minnesota. ECF 30 ¶ 9. Shortly thereafter, the police pulled the defendant over and seized 713 grams of methamphetamine from his vehicle. ECF 30 ¶ 10.

The Criminal History of the Defendant

The defendant has prior adult convictions for driving under the influence (five times), burglary, third-degree criminal sexual assault, providing a false name to a police officer, possession of a controlled substance (three times), third-degree sale of a controlled substance (two times), receiving stolen property, and several vehicle-related offenses. ECF 30 ¶¶ 30-44. The defendant has eight criminal history points, which places him in criminal history category IV. ¶¶ 44-46.

Guideline Range and Sentencing Recommendation

The probation office correctly determined that the defendant has a total offense level of 31, a criminal history category of IV, and a guideline range of 151 to 188 months. ECF 30 ¶¶ 26, 46, 73. The total offense level reflects a base offense level of 34 (at least 500 grams but not more than 1,500 grams of actual methamphetamine) reduced by three levels for timely acceptance of responsibility. ¶¶ 17, 24-26.

The History and Characteristics of the Defendant

The defendant is 55 years old and was born in Hutchinson, Minnesota. ECF 30 ¶ 51. His parents are still alive as well as several siblings. *Id.* After his parents divorced when the defendant was five years old, he moved in with his maternal grandparents. ¶ 52. At the age of 12, the defendant was placed in a group home until he was 16. ¶ 53. He was exposed to child molesters during his adolescent years. ¶¶ 53-54. He eventually moved back in with his mother. ¶ 55. The defendant has never been married, but he has one grown daughter. ¶ 56. The defendant is in poor physical health and has recently suffered a heart attack. ¶ 59. He also has very high blood pressure. *Id.* He has a long substance abuse history. ¶¶ 61-63. The defendant graduated from high school in 1985 and completed post-secondary auto mechanic and machine tool courses. ¶ 64. The defendant was a self-employed auto mechanic prior to his arrest for the instant offense. ¶ 66. He does not appear to have the ability to pay a criminal fine. ¶ 71.

The Needs of Sentencing

This case is aggravated by the serious nature of the charge, which involved an ongoing conspiracy to distribute large amounts of methamphetamine, and the defendant's lengthy criminal record which includes six prior felony convictions – three for drug trafficking offenses and one for a serious sex crime. The case is mitigated by the defendant's timely plea of guilty, his difficult childhood, his physical health issues, and his advancing age. The government asks the Court to impose a sentence that includes a term of imprisonment at the low end of the guideline range of 151 to 188 months. Such a sentence would serve the needs of sentencing to reflect the seriousness of the offense, to

promote respect for the law, to provide just punishment for the offense, to afford adequate deterrence, to protect the public from further crimes of the defendant, and to avoid unwarranted sentencing disparities among defendants.

WHEREFORE, the government asks this Honorable Court to impose a sentence that includes a term of imprisonment at the low end of the guideline range of 151 to 188 months.

Dated: August 25, 2020

Respectfully submitted,

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s/ *Thomas M. Hollenhorst*

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